

DANNY ISQUIERDO,  
Plaintiff,  
v.  
W.G. HALL, LLC,  
Defendant

Case No. 15-cv-00335-BLF

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

**ORDER GRANTING (1) FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT; (2) PLAINTIFF'S  
MOTION FOR ATTORNEYS' FEES,  
COSTS, AND SERVICE AWARD**

[Re: ECF 33, 34]

Plaintiff Danny Isquierdo (“Isquierdo”) sued his former employer, Defendant W.G. Hall, LLC doing business as @Work Personnel Services Inc. (“W.G. Hall”) on a class wide basis for violations of various wage and hour laws in California. Two motions have been filed in this putative class action. First, Isquierdo moves for an order granting final approval of the settlement agreement. *See* Motion for Final Approval of the Class Action Settlement, ECF 34-1, (hereinafter, “Final Approval Mot.”). Second, Isquierdo moves for an award of attorneys’ fees, costs and an incentive award. Motion for Att’y Fees and Costs, ECF 33 (hereinafter, “Mot. for Att’y Fees”).

The Court held a final fairness hearing on August 24, 2017. For the reasons set forth below and on the record at the final fairness hearing, the Court GRANTS Isquierdo's motion for final approval and the motion for attorneys' fees, costs, and incentive award.

1           **I. BACKGROUND**

2           **A. The Parties and Claims**

3           Isquierdo was employed by W.G. Hall from approximately April 2014 through May 2014,  
4 working as a forklift driver for a number of W.G. Hall's clients in Monterey County. Isquierdo  
5 claims that W.G. Hall had a policy and practice of failing to compensate its employees for  
6 mandatory work that the employees performed, which violated several labor laws in California.  
7 *See generally* Second Amended Complaint ("SAC"), ECF 16 (filed July 27, 2015). For example,  
8 Isquierdo alleges that W.G. Hall had a mandatory requirement that Isquierdo and the class  
9 members complete pre-assignment tasks without payment of wages. *Id.* ¶¶ 57-66. Moreover,  
10 Isquierdo alleges that the class was not given reporting time pay for occasions when those tasks  
11 constituted less than half of their scheduled or usual day's work, or for occasions when such tasks  
12 required them to report for work just to be sent home. *Id.* ¶¶ 52-56. Because the time involved in  
13 these uncompensated tasks was not reflected in their wage statements, Isquierdo and the putative  
14 class members allege that they received inaccurate, incomplete and late wage statements. *Id.*  
15 ¶¶ 67-85. Isquierdo further contends that the wage statements contained other administrative  
16 defects that were not corrected until after litigation commenced. In addition, Isquierdo alleges that  
17 W.G. Hall regularly and consistently failed to reimburse him and the class members for work  
18 related expenses. *Id.* ¶¶ 92-96.

19           The Second Amended Complaint asserts eight causes of action including several violations  
20 of wage and hour laws under the California Labor Code, violations of California's Unfair  
21 Competition Law (Cal. Bus. & Prof. Code § 17200), and a cause of action under the California  
22 Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code § 2698) ("PAGA"). *See*  
23 *generally* SAC.

24           **B. Terms of the Settlement Agreement**

25           After nearly two years of litigation, the parties settled the case with the aid of an  
26 experienced mediator in the wage and hour class action field, Michael J. Loeb, Esq. The written  
27 Settlement Agreement contemplates the certification of an opt-out settlement class pursuant to  
28 Federal Rule of Civil Procedure 23, defined as: "All persons employed by W.G. Hall, LLC doing

1 business as @Work Personnel Services, Inc. at a place of business in California and classified by  
2 W.G. Hall, LLC doing business as @Work Personnel Services, Inc. as an hourly or non-exempt  
3 employee at any time from July 3, 2010 through December 31, 2015.” Settlement Agreement  
4 ¶ 1.6, ECF 25-2, Ex. 1. Notice was successfully delivered to 9,161 Settlement Class Members,  
5 and only eight (8) chose to opt-out. The Settlement Agreement provides that W.G. Hall will pay  
6 the total amount of \$445,000 (“Settlement Payment”) to settle all claims asserted against them in  
7 this action. *Id.* ¶ 6.1. The Net Settlement Amount is estimated to be \$264,226 after consideration  
8 of attorneys’ fees and costs, settlement administrator’s fees, incentive awards to Isquierdo as the  
9 class representative, and the civil penalties under PAGA. *Id.* ¶ 6.3. The net settlement funds will  
10 then be divided proportionately among the class members who do not opt-out, with each class  
11 member receiving a pro-rata payment based on the number of hours that class member worked  
12 during the Class Period.

13 On February 28, 2017, the Court issued an order which: granted preliminary approval of  
14 the class action settlement; preliminarily certified the class; appointed Isquierdo as class  
15 representative; appointed Isquierdo’s counsel as Class Counsel; approved forms and methods of  
16 notice to the class; set a deadline for objections forty-five (45) calendar days after the date on  
17 which the Settlement Administrator mailed the class notice; and set a hearing date for Isquierdo’s  
18 motion for final approval of the class action settlement and for the motion for attorneys’ fees. *See*  
19 Order Preliminarily Approving Settlement, ECF 31. No objections were received in response to  
20 the class notice, and no objectors appeared at the final fairness hearing.

21 On August 24, 2017, the Court heard Isquierdo’s motion for final approval and motion for  
22 attorneys’ fees and costs. The Court thereafter granted both the motion for final approval of class  
23 action settlement and the motion for attorneys’ fees on the record, and it advised the parties that an  
24 order setting forth the Court’s reasoning would be forthcoming. The Court’s reasoning is set forth  
25 below.

## 1           **II. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

2           In line with its previous order granting preliminary approval, the Court now concludes that  
3           the proposed settlement satisfies the requirements of Federal Rule of Civil Procedure 23(e) and is  
4           fair, adequate, and reasonable.

### 5           **A. Legal Standard**

6           “The claims, issues, or defenses of a certified class may be settled . . . only with the court’s  
7           approval.” Fed. R. Civ. P. 23(e). “Adequate notice is critical to court approval of a class  
8           settlement under Rule 23(e).” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). In  
9           addition, Rule 23(e) “requires the district court to determine whether a proposed settlement is  
10           fundamentally fair, adequate, and reasonable.” *Id.* at 1026. In order to assess a settlement  
11           proposal, the district court must balance a number of factors:

12           (1) the strength of the plaintiffs’ case; (2) the risk, expense,  
13           complexity, and likely duration of further litigation; (3) the risk of  
14           maintaining class action status throughout the trial; (4) the amount  
15           offered in settlement; (5) the extent of discovery completed and the  
16           stage of the proceedings; (6) the experience and views of counsel;  
17           (7) the presence of a governmental participant; and (8) the reaction  
18           of the class members to the proposed settlement.

19           *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citing *Hanlon*, 150 F.3d at  
20           1026)).

21           Settlements that occur before formal class certification also require a higher standard of  
22           fairness. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such  
23           settlements, in addition to considering the above factors, the court also must ensure that “the  
24           settlement is not the product of collusion among the negotiating parties.” *In re Bluetooth Headset*  
25           *Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

### 26           **B. Rule 23(a) and (b) Requirements**

27           A class action is maintainable only if it meets the four Rule 23(a) prerequisites:

28           (1) the class is so numerous that joinder of all members is  
29           impracticable;  
30           (2) there are questions of law or fact common to the class;  
31           (3) the claims or defenses of the representative parties are typical of  
32           the claims or defenses of the class; and

1 (4) the representative parties will fairly and adequately protect the  
2 interests of the class.

3 Fed. R. Civ. P. 23(a). In a settlement-only certification context, the “specifications of the Rule . . .  
4 designed to protect absentees by blocking unwarranted or overbroad class definitions . . . demand  
5 undiluted, even heightened, attention[.]” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620  
6 (1997). “Such attention is of vital importance, for a court asked to certify a settlement class will  
7 lack the opportunity, present when a case is litigated, to adjust the class, informed by the  
proceedings as they unfold.” *Id.*

8 In addition to the Rule 23(a) prerequisites, “parties seeking class certification must show  
9 that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Amchem Prods., Inc.*, 521 U.S. at  
10 614. Rule 23(b)(3), relevant here, requires that (1) “questions of law or fact common to class  
11 members predominate over any questions affecting only individual members” and (2) “a class  
12 action is superior to other available methods for fairly and efficiently adjudicating the  
13 controversy.” Fed. R. Civ. P. 23(b)(3). The “pertinent” matters to these findings include:

14 (A) the class members’ interests in individually controlling the  
15 prosecution or defense of separate actions;  
16 (B) the extent and nature of any litigation concerning the  
17 controversy already begun by or against class members;  
18 (C) the desirability or undesirability of concentrating the litigation of  
the claims in the particular forum; and  
19 (D) the likely difficulties in managing a class action.

20 *Id.*

21 The Court previously found the settlement class satisfied the requirements for numerosity,  
22 commonality, typicality, and adequacy of representation under Rule 23(a). *See* Preliminary  
23 Approval Order. The Court is unaware of any changes since the preliminary approval that would  
24 alter its analysis. *See G.F. v. Contra Costa Cty.*, No. 16-3667, 2015 WL 4606078, at \*11 (N.D.  
25 Cal. July 30, 2015). Nevertheless, the Court summarizes its basis for determining that the  
26 requirements of Federal Rule of Civil Procedure 23 have been satisfied. First, the Settlement  
27 Class comprises of 9,153 employees potentially impacted by the allegations raised in this case,  
28 and the individual joinder of that many persons would be impracticable. Second, class members

1 share common questions of law and fact pertaining to, for example, whether W.G. Hall  
2 consistently underpaid class members and misreported their wage statements during the relevant  
3 class period. Third, the claims of Isquierdo as the class representative are typical of the class,  
4 arising from W.G. Hall’s alleged pattern and practices regarding its payment policies and wage  
5 reporting. The representation is also adequate because there are no known conflicts of interest  
6 with proposed class members and Class Counsel is experienced in wage and hour class action  
7 lawsuits such as this. Lastly, questions of law and fact common to class members predominate  
8 over questions affecting only individuals, and certification of a Rule 23(b)(3) opt-out settlement  
9 class action for purposes of settlement is superior to other available means of adjudicating this  
10 dispute.

11 **C. Adequacy of Notice**

12 The Court previously approved the parties’ plan for providing notice to the class when it  
13 granted preliminary approval of the class action settlement. *See* Preliminary Approval Order, ECF  
14 31. In the motion for final approval, the parties state that they have carried out this notice plan.  
15 Final Approval Mot. 6. Prior to the preliminary approval hearing, the Court examined carefully  
16 the proposed class notice. At the preliminary approval hearing on January 19, 2017, the Court  
17 requested that the parties submit a joint update regarding whether the settlement administrator’s  
18 fees could be reduced and what the total value of the settlement credit from the related *Zemudio*  
19 settlement would be. The Court further requested that the parties make certain changes to the  
20 notice in order to clarify the procedures for objecting to the settlement and attending the final  
21 approval hearing, as well to clarify the payment schedule. The parties submitted a joint status  
22 update and a revised class notice addressing the Court’s comments at the preliminary approval  
23 hearing. *See* Status Report Re Preliminary Approval, ECF 29; Proposed Order Re Modification to  
24 Conditional Approval Following the Parties’ Joint Status Update, ECF 30.

25 Isquierdo submits a declaration from the Settlement Administrator, Kelly Kratz, stating  
26 that the notice was delivered to all class members by United States mail on April 13, 2017. Kratz  
27 Decl. ¶ 7, ECF 34-3. After tracing and re-mailing notices that were returned as undeliverable, a  
28 total of 8,655 (94.47%) of the 9,161 notices were successfully delivered. *Id.* ¶¶ 8-10. The Court is

1 satisfied that the class members were provided with adequate notice. *See Mullane v. Cent.*  
2 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (holding that notice must “apprise interested  
3 parties of the pendency of the action and afford them an opportunity to present their objections”);  
4 *Lundell v. Dell, Inc.*, No. C05-3970, 2006 WL 3507938, at \*1 (N.D. Cal. Dec. 5, 2006) (holding  
5 that notice sent via email and first class mail constituted the “best practicable notice” and satisfied  
6 due process requirements).

7 **D. Fairness, Adequacy and Reasonableness**

8 In light of the legal standard articulated above, the Court is guided by the *Hanlon* factors in  
9 evaluating whether the proposed settlement as a whole satisfies Rule 23(e). 150 F.3d at 1026. The  
10 Court has considered the *Hanlon* factors that are relevant to the circumstances of this case and  
11 concludes that the proposed settlement is fundamentally fair, adequate, and reasonable. *Rodriguez*  
12 *v. W. Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009) (“A district court may consider some or all  
13 of the [Hanlon] factors when assessing whether a class action settlement agreement meets this  
14 standard [under Rule 23(e)(2)].”) (internal citation and quotation marks omitted). As further  
15 discussed below, the Court also finds that there is no indication of collusion among the negotiating  
16 parties because the proposed settlement is the result of post-discovery, arms-length negotiations  
17 between experienced counsel with the assistance of an experienced mediator in the wage and hour  
18 class action field. “A presumption of correctness is said to ‘attach to a class settlement reached in  
19 arm’s-length negotiations between experienced capable counsel after meaningful discovery.’” *In*  
20 *re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at \*9 (C.D. Cal. June 10, 2005)  
21 (quoting *Manuel for Complex Litigation* (Third) § 30.42 (1995)).

22 The Court concludes that the proposed settlement takes into account the risks that  
23 Isquierdo faced in attempting to prevail on behalf of the class. Settlement at this point in the  
24 litigation is also appropriate given the extent of discovery already completed by the parties as well  
25 as the likelihood of expensive and risky continued litigation. In addition, the gross settlement  
26 amount of \$445,000 results in an average of approximately \$28.88 per class member after  
27 deductions. The Settlement Agreement also provides that the settlement funds will be distributed  
28 to the class based on a pro-rata formula in proportion to the number of hours each class member

1 worked during the Class Period. Given these circumstances, the Court concludes that this  
2 recovery is fair and adequate. The class members apparently share the Court's position, as there  
3 were no objections to the proposed settlement and a very small number of class members chose to  
4 opt-out.

5 **i. Strength of Isquierdo's Case and the Risk of Continuing Litigation**

6 Approval of a class settlement is appropriate when "there are significant barriers plaintiffs  
7 must overcome in making their case." *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848,  
8 851 (N.D. Cal. 2010). Similarly, difficulties and risks in litigating weigh in favor of approving a  
9 class settlement. *See Rodriguez*, 563 F.3d at 966.

10 The Court finds that absent settlement, it is likely that litigation would have continued for a  
11 significant period of time and would have resulted in the substantial expenditure of resources by  
12 both parties, particularly at the class certification stage. The parties estimate that continued  
13 litigation could take years and would necessitate costs associated with expert discovery, class  
14 certification, summary judgment, as well as trial preparation. Isquierdo recognizes that the  
15 potential outcome could be of no greater value to the class members than the proposed settlement,  
16 and could also potentially result in a recovery that is significantly less than the agreement reached  
17 between the parties.

18 Although Isquierdo maintains his belief that he would prevail on the underlying merits of  
19 the action, he acknowledges that several hurdles stood in his way. Final Approval Mot. 12. For  
20 example, W.G. Hall had a number of viable defenses to Isquierdo's claim for unpaid wages,  
21 including a *de minimis* defense that would have risked dismissal of some or all of Isquierdo's  
22 claims. Counsel for Isquierdo also recognized that it would be difficult to prove that W.G. Hall  
23 "willfully" failed to pay wages or to provide complete and accurate wage statements to the class  
24 members. As is the case for all plaintiffs seeking to represent a class of similarly situated  
25 individuals, Isquierdo also considered the possibility that the putative class would not be certified.  
26 *Id.* 13.

27 For these reasons, the Court finds that the risks associated with Isquierdo's case and the  
28 likelihood of continued litigation weigh in favor of approving the settlement.

## ii. The Amount Offered in Settlement

“In assessing the consideration obtained by the class members in a class action settlement, ‘it is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness.’” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (quoting *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982)). “In this regard, it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial.” *Id.* (citing *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)).

The Settlement Agreement provides for a gross amount of \$445,000 before deductions of various costs associated with settlement. Settlement Agreement ¶ 6.1. After these deductions, the net settlement amount is approximately \$264,226. *Id.* ¶ 6.3. The net amount would then be distributed based on a compensation formula tied to the length of employment that ensures that class members who worked throughout the Class Period receive the highest compensation. Thus, while the average amount per class member is approximately \$28.88, class members who worked a large number of hours will receive a favorable pro-rata share of the settlement amount. For example, the class member working the most number of hours during the Class Period will be entitled to an estimated amount of \$730.24 under the settlement terms. Final Approval Mot. 9.

Isquierdo acknowledges that the settlement amount does not compensate class members for 100% of the alleged time at issue. However, after discovery and throughout mediation, Isquierdo accepted that “a 100% violation rate is not realistic and recovery would likely be significantly reduced at trial.” *Id.* 10. The SAC contains allegations of a wide variety of wage and hour violations, and it is likely that most employees did not suffer the maximum amount of violations. Thus, discounting the claims in order to reach a settlement was reasonable. The fact that there are no objections to the settlement further supports the reasonableness of the settlement amount.

Under these circumstances, this factor weighs in favor of approval.

### iii. Extent of Discovery

The Court also considers the fact that the parties have engaged in a significant amount of formal and informal discovery during the nearly three years that this case has been pending. The parties propounded multiple sets of discovery requests and responses, and exchanged documents including extensive company data regarding W.G. Hall’s time and pay records. After conducting this discovery as well as participating in the mediation process, Class Counsel was able to evaluate this case and to make an informed decision that settlement was the best way forward. The proposed settlement is thus not a “product of uneducated guesswork.” *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (finding the parties were sufficiently informed prior to settlement because they engaged in discovery, took depositions, briefed motions, and participated in mediation).

For these reasons, this factor also weighs in favor of approval.

#### iv. The Experience and Views of Counsel

“The recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.” *Omnivision*, 559 F. Supp. 2d at 1043 (citation omitted); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) (“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each parties’ expected outcome in litigation.”). Here, Class Counsel declares that the proposed settlement balances the realistic monetary relief available to the class against the magnitude of the risks of continued litigation and thus is fair, adequate, and reasonable. Declaration of B. James Fitzpatrick (“Fitzpatrick Decl.”), ECF 34-2, ¶¶ 3, 6. The Court credits the recommendation of Class Counsel, who have more than 30 years of wage and hour and class action experience combined, and have served as counsel in an impressive number of similar class actions. *Id.* ¶¶ 7-9.

In light of the experience of counsel and their belief that the settlement is in the best interest of the class members, this factor weighs in favor of approval.

## v. The Reaction of the Class to the Proposed Settlement

After over 9,000 class members received notice, there were no objections to the proposed

1 settlement or to Class Counsel's motion for fees, and only eight chose to opt-out. The opt-out rate  
2 in this case was a fraction of 1%, which means that 99.91% of the class (9,153 class members)  
3 will receive their pro-rata settlement award. This extremely positive reaction from the class to the  
4 proposed settlement strongly favors final approval. Courts have approved settlements with much  
5 higher opt-out rates. *See, e.g., Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D.  
6 Cal. 2010) (granting final approval of settlement where 16 out of 329 class members (4.86%)  
7 requested exclusion). The lack of objectors to the settlement also supports approval. *See Cruz v.*  
8 *Sky Chefs, Inc.*, 2014 WL 7247065, at \*5 (N.D. Cal. Dec. 19, 2014) ("A court may appropriately  
9 infer that a class action settlement is fair, adequate, and reasonable when few class members  
10 object to it.").

11 **E. The *Bluetooth* Factors**

12 In addition to the factors considered above, the Court must also take into account that this  
13 settlement occurred before formal class certification. Thus, the settlement must meet a higher  
14 standard of fairness. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458. The Court must examine  
15 the settlement with "an even higher level of scrutiny for evidence of collusion or other conflicts of  
16 interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair."  
17 *In re Bluetooth*, 654 F.3d at 946. "Collusion may not always be evident on the face of a  
18 settlement, and courts therefore must be particularly vigilant not only for explicit collusion, but  
19 also for more subtle signs that class counsel have allowed pursuit of their own self-interests and  
20 that of certain class members to infect the negotiations." *Id.* at 947. Signs of subtle collusion  
21 include:

22 (1) when counsel receive a disproportionate distribution of the  
23 settlement, or when the class receives no monetary distribution but  
class counsel are amply rewarded;

24 (2) when the parties negotiate a "clear sailing" arrangement  
25 providing for the payment of attorneys' fees separate and apart from  
class funds, which carries the potential of enabling a defendant to  
26 pay class counsel excessive fees and costs in exchange for counsel  
accepting an unfair settlement on behalf of the class; and

27 (3) when the parties arrange for fees not awarded to revert to  
28 defendants rather than be added to the class fund.

1 *Id.* (internal quotations marks and citations omitted).

2 The Settlement Agreement in this case does not include any of these warning signs and  
3 contains no indication of a collusive deal. The first factor is not present, as all class members are  
4 entitled to monetary relief based on the number of hours worked during the Class Period. There is  
5 also no “clear sailing” provision because the attorneys’ fees, discussed below, represent a  
6 reasonable percentage of the common settlement fund and are also comparable to the lodestar.  
7 The \$5,000 service award to Isquierdo is also not indicative of a collusive deal because this  
8 amount is “presumptively reasonable” in the Ninth Circuit. *See, e.g., Smith v. Am. Greetings*  
9 *Corp.*, No. 14-2577, 2016 WL 362395, at \*10 (N.D. Cal. Jan. 29, 2016). In regards to the third  
10 factor, the proposed settlement is also non-reversionary.

11 Importantly, the parties reached the proposed settlement after an extensive arm’s-length,  
12 non-collusive mediation with the assistance of an experienced mediator in the wage and hour class  
13 action field, Michael J. Loeb, Esq. Final Approval Mot. 15. *See G. F. v. Contra Costa Cty.*, No.  
14 13-03667-MEJ, 2015 WL 4606078, at \*13 (N.D. Cal. July 30, 2015) (noting that “[t]he assistance  
15 of an experienced mediator in the settlement process confirms that the settlement is non-  
16 collusive”). Accordingly, the Court concludes that none of the *Bluetooth* factors are present and  
17 the proposed settlement does not raise an inference of collusion.

18 **F. Conclusion**

19 For the foregoing reasons, and after considering the circumstances as a whole as guided by  
20 the *Hanlon* and *Bluetooth* factors, the Court finds that notice of the proposed settlement was  
21 adequate, the settlement is fair, adequate and reasonable, and the settlement was not the result of  
22 collusion. As such, Isquierdo’s Motion for Final Approval of Class Action Settlement is hereby  
23 GRANTED.

24 **III. MOTION FOR ATTORNEYS’ FEES AND COSTS**

25 **A. Legal Standard**

26 “While attorneys’ fees and costs may be awarded in a certified class action where so  
27 authorized by law or the parties’ agreement, Fed. R. Civ. P. 23(h), courts have an independent  
28 obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have

1 already agreed to an amount.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th  
2 Cir. 2011). “Where a settlement produces a common fund for the benefit of the entire class,” as  
3 here, “courts have discretion to employ either the lodestar method or the percentage-of-recovery  
4 method” to determine the reasonableness of attorneys’ fees. *Id.* at 942.

5 Under the percentage-of-recovery method, the attorneys are awarded fees in the amount of  
6 a percentage of the common fund recovered for the class. *Bluetooth*, 654 at 942. Courts applying  
7 this method “typically calculate 25% of the fund as the benchmark for a reasonable fee award,  
8 providing adequate explanation in the record of any special circumstances justifying a departure.”  
9 *Id.* (internal quotation marks omitted). However, “[t]he benchmark percentage should be adjusted,  
10 or replaced by a lodestar calculation, when special circumstances indicate that the percentage  
11 recovery would be either too small or too large in light of the hours devoted to the case or other  
12 relevant factors.” *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.3d 1301, 1311 (9th  
13 Cir. 2011). Relevant factors to a determination of the percentage ultimately awarded include: “(1)  
14 the results achieved; (2) the risk of litigation; (3) the skill required and quality of work; (4) the  
15 contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made  
16 in similar cases.” *Tarlecki v. bebe Stores, Inc.*, No. C 05–1777 MHP, 2009 WL 3720872, at \*4  
17 (N.D. Cal. Nov. 3, 2009).

18 Under the lodestar method, attorneys’ fees are “calculated by multiplying the number of  
19 hours the prevailing party reasonably expended on the litigation (as supported by adequate  
20 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.”  
21 *Bluetooth*, 654 F.3d at 941. This amount may be increased or decreased by a multiplier that  
22 reflects factors such as “the quality of representation, the benefit obtained for the class, the  
23 complexity and novelty of the issues presented, and the risk of nonpayment.” *Id.* at 942.

24 In common fund cases, a lodestar calculation may provide a cross-check on the  
25 reasonableness of a percentage award. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir.  
26 2002). Where the attorneys’ investment in the case “is minimal, as in the case of an early  
27 settlement, the lodestar calculation may convince a court that a lower percentage is reasonable.”  
28 *Id.* “Similarly, the lodestar calculation can be helpful in suggesting a higher percentage when

1 litigation has been protracted.” *Id.* Thus even when the primary basis of the fee award is the  
2 percentage method, “the lodestar may provide a useful perspective on the reasonableness of a  
3 given percentage award.” *Id.* “The lodestar cross-check calculation need entail neither  
4 mathematical precision nor bean counting. . . . [courts] may rely on summaries submitted by the  
5 attorneys and need not review actual billing records.” *Covillo v. Specialtys Cafe*, No. C-11-  
6 00594-DMR, 2014 WL 954516, at \*6 (N.D. Cal. Mar. 6, 2014) (internal quotation marks and  
7 citation omitted).

8 An attorney is also entitled to “recover as part of the award of attorney’s fees those out-of-  
9 pocket expenses that would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24  
10 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation omitted).

11 **B. Discussion**

12 Class Counsel seek an award of attorneys’ fees based on the common fund method. Class  
13 Counsel request \$111,250 in attorneys’ fees, which represents 25% of the gross settlement  
14 amount. *See Mot. for Att’y Fees 1*. The billing rate for Class Counsel in this matter is \$450 per  
15 hour, which is reasonable in the Northern District of California. Declaration of B. James  
16 Fitzpatrick in Support of Plaintiff’s Motion for Attorneys’ Fees and Costs, (“Fitzpatrick Att’y Fees  
17 Decl.”) ECF 33-1 ¶ 10. Class Counsel further demonstrate that they have dedicated 260 hours and  
18 other firm resources toward litigating this case, and that they took on substantial risk by taking the  
19 case on a contingency fee basis for several years without any guarantee of recovery. *Id.* ¶ 12.

20 The Court has reviewed Class Counsel’s motion for attorneys’ fees and supporting  
21 declaration and concludes that an award of \$111,250 in attorneys’ fees to Class Counsel is  
22 reasonable. This amount represents 25% of the common fund, which is the “benchmark” in the  
23 Ninth Circuit. *Bluetooth*, 654 at 942. The declaration submitted by Class Counsel also makes  
24 clear that the requested amount actually reflects a slight reduction in Class Counsel’s lodestar  
25 amount. Fitzpatrick Att’y Fees Decl. ¶ 12; Mot. for Att’y Fees 2, 4-5. Given the positive outcome  
26 of the settlement for the class members, as well as the lodestar cross-check, the Court finds that  
27 the requested fee award is reasonable. Accordingly, Class Counsel’s motion for \$111,250 in  
28 attorneys’ fees is GRANTED.

1 Class Counsel also seek reimbursement of \$6,846.27 in out-of-pocket expenses advanced  
2 and incurred during the litigation. Mot. for Att'y Fees 6-7; Fitzpatrick Att'y Fees Decl. ¶ 17.  
3 Class Counsel incurred these costs for filing fees, courier/service of process fees, accountant  
4 professional services, and mediation. Mot. for Att'y Fees 7. These litigation costs over a two-year  
5 period are reasonable and Class Counsel's motion for \$6,846.27 in costs is GRANTED.

6 **IV. SERVICE AWARD**

7 **A. Legal Standard**

8 Service awards “are discretionary . . . and are intended to compensate class representatives  
9 for work done on behalf of the class, to make up for financial or reputational risk undertaken in  
10 bringing the action, and, sometimes, to recognize their willingness to act as a private attorney  
11 general.” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (internal citation  
12 omitted). Courts evaluate incentive or service awards individually, “using relevant factors  
13 including the actions the plaintiff has taken to protect the interests of the class, the degree to which  
14 the class has benefited from those actions, the amount of time and effort the plaintiff expended in  
15 pursuing the litigation and reasonable fears of workplace retaliation.” *Staton*, 327 F.3d at 977  
16 (citation and internal quotations and alterations omitted). Indeed, “courts must be vigilant in  
17 scrutinizing all incentive awards to determine whether they destroy the adequacy of the class  
18 representatives.” *Radcliffe v. Experian Info. Sols., Inc.*, 715 F.3d 1157, 1164 (9th Cir. 2013).

19 **B. Discussion**

20 Isquierdo requests a service award—also known as an enhancement payment or incentive  
21 award—of \$5,000. Mot. for Att'y Fees 6-7. Again, \$5,000 is the Ninth Circuit’s “benchmark” to  
22 compensate class representatives for their work on behalf of a class. *In re Online DVD-Rental*  
23 *Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015); *Harris v. Vector Marketing Corp.*, No. C-  
24 08-5198, 2012 WL 381202, at \*7 (N.D. Cal. Feb. 6, 2012) (collecting cases holding that an award  
25 of \$5,000 has been found to be presumptively reasonable in this Circuit). Although Isquierdo  
26 originally requested a higher amount, he ultimately adjusted his request downward to the \$5,000  
27 benchmark in light of the discussion at the hearing on the motion for preliminary approval of the  
28 settlement. *See* ECF 29, 4. Isquierdo estimates that he spent over fifteen hours performing work

1 on behalf of the class, and Class Counsel represents that Isquierdo went “above and beyond” the  
2 ordinary responsibilities of a class representative by providing Class Counsel with information and  
3 documents, attending numerous meetings, preparing for mediation, and reviewing documents  
4 including his own declaration in this matter. Mot. for Att'y Fees 6-7.

5 The Court also notes that the service award makes up only one percent of the gross  
6 settlement amount, which is a “tiny fraction of the common fund,” justifying the amount to be  
7 awarded. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995); Mot. for  
8 Att'y Fees 12-13. The request for a \$5,000 service award to Isquierdo is hereby GRANTED.

9 **V. ORDER**

10 For the foregoing reasons, and for the reasons set forth on the record at the final approval  
11 hearing, the Court hereby ORDERS as follows:

12 1. The class is certified for settlement purposes only.  
13 2. Final Approval of the Class Action Settlement is GRANTED. The Court finds that  
14 the proposed settlement is fair, adequate, and reasonable.

15 3. Class Counsel’s request for an award of attorneys’ fees in the amount of \$111,250  
16 to be paid from the Settlement Fund is reasonable. The motion for an award of \$111,250 in  
17 attorneys’ fees is hereby GRANTED.

18 4. Class Counsel’s request for a reimbursement of litigation costs in the amount of  
19 \$6,846.27 to be paid from the Settlement Fund is reasonable. The motion for an award of  
20 \$6,846.27 in costs is hereby GRANTED.

21 5. Class Counsel’s request for an enhancement payment of \$5,000 for Plaintiff Danny  
22 Isquierdo is warranted and reasonable. The request for an enhancement payment of \$5,000 is  
23 GRANTED.

24  
25 Dated: October 3, 2017

  
26 BETH LABSON FREEMAN  
27 United States District Judge  
28